UNITED NATIONS

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Economic and Social Council

Distr.
GENERAL

E/CN.4/Sub.2/1996/20
11 June 1996

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-eighth session
Item 11 of the provisional agenda

THE IMPLEMENTATION OF THE HUMAN RIGHTS OF WOMEN

Note by the Secretary-General

1. In its resolution 1995/26 entitled "Implementation of the human rights of women and the girl child", the Sub-Commission, inter alia requested the Secretary-General to obtain the views of the Committee on the Elimination of Discrimination against Women and the Commission on the Status of Women on the question whether it would be desirable to have an advisory opinion on the value and legal effect of reservations concerning the Convention on the Elimination of All Forms of Discrimination against Women, and to invite those bodies to formulate, in their replies, any other observations on the question of reservations to that Convention they consider appropriate.

2. A summary of the information on this issue received from the Division for the Advancement of Women of the Secretariat is given below.

3. The issue of reservations to the Convention on the Elimination of All Forms of Discrimination against Women has been discussed many times by the United Nations General Assembly, the Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women (CEDAW). Those reservations, limitations made by States parties to the Convention when becoming a party, have been one of the most contentious matters that have arisen in relation to the Convention.

4. The Convention has been subject to more substantive reservations than probably any other major human rights treaty. While some of these reservations are relatively narrow in scope, others are wide-ranging and have the potential to limit significantly the obligations undertaken by the reserving States and to undermine the pursuit of the objectives of the treaty.

5. There are a number of issues that arise in relation to reservations: the permissibility of those reservations, the manner in which their validity is to be determined, and the implications of the reservations for the obligations of States parties.

6. The World Conference on Human Rights urged the United Nations to encourage the goal of universal ratification by all the States of the Convention on the Elimination of All Forms of Discrimination against Women by the year 2000. The General Assembly in many of its resolutions expressed its satisfaction with the increasing number of States that have ratified or acceded to the Convention and supported the recommendation of CEDAW to draw attention to those reservations which are incompatible with the objective and purpose of the Convention. It also encouraged States to consider limiting the extent of any reservation they lodge to the Convention, to formulate any reservations as precisely and as narrowly as possible and to ensure that no reservation is incompatible with the object or the purpose of the Convention or otherwise contrary to international law; it further requested States parties to the Convention to review their reservations regularly, with a view to withdrawing them expeditiously so that the Convention may be fully implemented.

7. It is in the Committee on the Elimination of Discrimination against Women that the most focused examination of the practical impact of the various reservations has taken place. While CEDAW does not have the power to decide the incompatibility of reservations, it necessarily has to deal with issues relating to their scope; in particular, it must ascertain the extent to which implementation of the other obligations assumed by the relevant State party is impeded by the reservations it has entered.

8. In view of its frequently expressed concern about reservations to the Convention, and bearing in mind the recommendation of the World Conference on Human Rights and of the General Assembly concerning reservations, the Committee has on a number of occasions raised the issue of reservations to the Convention. It recognized that the Convention allows reservations so that a maximum number of States can become parties. However, article 28 of the Convention provides, inter alia: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted."

9. At its twelfth session, the Committee recalled that it had raised the issue of reservations to the Convention at its previous sessions and that at its eleventh session it had recommended, inter alia, that in connection with preparations for the World Conference on Human Rights in 1993, States parties should raise the question of the validity and legal effect of reservations to the Convention in the context of reservations to other human rights treaties

(General recommendation 20). The Committee decided to bring again to the attention of the States parties the seriousness with which the Committee considers the problem of reservations and requested that this concern be conveyed to the 7th meeting of States parties.

10. The Committee decided to amend the guidelines for the preparation of the initial and subsequent periodic reports to include a section indicating how the Committee would like States parties which have entered reservations to report on them. The amendment read as follows:

> "Each State party that has entered substantive reservations to the Convention should include information on them in each of its periodic reports.
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> "In reporting on reservations, the State party should indicate why it considered the reservation to be necessary and whether reservations the State party may or may not have entered on obligations with regards to the same rights in other conventions are consistent with the reservations to the Convention on the Elimination of All Forms of Discrimination against Women, as well as the precise effect of the reservation in terms of national law and policy. The State party should indicate the plans that it has to limit the effect of reservations and ultimately withdraw them and, whenever possible, specify a timetable for withdrawing them.
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> "States parties which have entered general reservations that do not refer to a specific article of the Convention or reservations to articles 2 and 3 should make a particular effort to report on the effect and interpretation of them. The Committee considers these to be incompatible with the object and purpose of the present Convention."

11. The Committee also requested that a specific letter be sent by the Secretary-General to those States parties that have entered substantive reservations to the Convention drawing their attention to the Committee's concern.

12. The Committee recommended that the programme of advisory services of the Centre for Human Rights and for the Division for the Advancement of Women should provide, on request, advice to States parties on the withdrawal of reservations.

13. The Committee requested the Secretariat to bring the Committee's concern about the reservations to the attention of the Commission on the Status of Women and the Commission on Human Rights, as well as to the other human rights treaty bodies.

14. The Committee further requested that the Secretariat, in preparing analyses of the reports of individual States parties, should include in the analysis an indication of reservations made by the State to other human rights conventions on the same human rights.

15. The Committee decided, for those States parties that have entered substantive reservations, to include in the concluding observations it prepares following the review of their periodic reports a section in which the Committee's views on the reservations would be reflected.

16. The Committee noted that a number of States parties which consider reservations of other States parties to be incompatible with the object and purpose of the Convention enter objections to the reservations. It encouraged those States parties to enter into a dialogue on a bilateral basis with the States to whose reservations they object with a view to finding a solution.

17. The Committee has constantly encouraged States to review and withdraw their reservations. The Committee has also sought to determine how reservations to individual articles undermine a State party's ability to fulfil the obligations it has accepted under other articles of the Convention, while endeavouring to establish the practical impact of broad, sweeping reservations on the implementation of individual articles of the Convention.

18. As at 1 August 1995, 45 States parties had made reservations to the Convention, including 7 African States, 13 Asian and Pacific States, 2 Eastern European States, 10 Latin American and Caribbean States and 13 Western European and other States. The nature and extent of these reservations, the largest proportion of which are to the dispute resolution procedure in the Convention, were analysed in a report presented to the Committee at its fourteenth session (CEDAW/C/1995/6).